

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 510 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHELSING JASHWANTSINH THAKOR VAGHELA

Versus

DISTRICT MAGISTRATE

Appearance:

Ms. Banna Dutta, Adv. for Petitioner
Ms. Manisha Lavkumar, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Ms. Manisha Lavkumar for the respondents nos.1, 2 and 3.

1. The detention order dated 28-8-1999 passed by the respondent no.1-District Magistrate, Banaskatnha at Palanpur against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that eight criminal cases are registered against the petitioner in between the period 26-2-1997 and 25-7-1999 at Gadh Police Station, Pathwada Police Station and Nashabandi Police Station respectively. That in each case Indian made foreign liquor has been seized from the possession of the petitioner.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, detention order is necessary because Chapter case filed against the petitioner under Sec.93 of the Bombay Prohibition Act is also pending, and therefore, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended at the Bar on behalf of the petitioner that the impugned order suffers from the vice of non application of mind, inasmuch as before passing the impugned order, the detaining authority has failed to consider the aspect of cancellation of bail, which was granted to the petitioner in cases registered against him. It is submitted that the petitioner was released on bail on 25-8-1999 in different cases registered against him six of which are pending for trial in Court.

5. It is pertinent to note that despite due service of rule, none of the respondents have filed any affidavit to controvert the averments made in the petition.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. 1995(2) G.L.H.1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the

detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this court(Coram: C.K.Thakkar & A.L.Dave, JJ.).

7. On scrutiny of the grounds of detention, it appears that the petitioner has been arrested time and again in respect to prohibition cases filed against him. However, the detaining authority does not appear to have considered the aspect of claiming cancellation of bail granted to the petitioner in pending cases before him. The detaining authority has observed in the grounds of detention that despite registration of cases against the petitioner, the petitioner has been continuing his bootlegging activities. However, nowhere in the grounds of detention, the detaining authority has stated that though the petitioner was released on bail and proceedings for cancellation of bail were resorted to, the petitioner is likely to be continued on bail and is also likely to indulge into antisocial activities.

8. In view of the above stated legal proposition, as the detaining authority has failed to consider the aspect of claiming cancellation of bail under Sec.437(5) of the Cr.P.C., there is non application of mind on the part of the detaining authority which has rendered the impugned order invalid.

9. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

10. On the basis of the foregoing discussion, the petition is allowed. The order of detention dated 28-8-1999 passed by the respondent no.1-District Magistrate, Banaskatnha at Palanpur, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Chelsing Jashwantsinh Thakor Vaghela is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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